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## **ECON Committee publishes draft report on EU relationships with third countries concerning financial services regulation and supervision**

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published a [draft own-initiative report](#) on relationships between the EU and third countries concerning financial services regulation and supervision.

Amongst other things, the draft report argues that:

- in many cases, the granting of equivalence is a unilateral decision taken by the EU and is not applied in a reciprocal manner by third countries, and that international cooperation could be better advanced by way of international agreements negotiated between the EU and third countries;
- the EU's process for granting equivalence lacks certainty and sufficient transparency, and requires a structured and practical framework outlining clear procedures;
- the process for granting equivalence to a third country in the area of financial services should always be scrutinised by the EU Parliament and these decisions should be taken by means of delegated acts rather than implementing acts;
- the EU Parliament should be consulted before a decision to withdraw equivalence is taken by the Commission, and calls for the introduction of clear procedures and timelines governing the adoption, withdrawal or suspension of equivalence decisions; and
- the European Supervisory Authorities (ESAs) should be equipped with the power to monitor regulatory developments in third countries and the EU Parliament should be kept informed of ongoing regulatory monitoring in third countries.

In light of the above, the draft report calls for:

- the Commission to adopt a legislative act establishing a clear framework for a transparent, coherent and consistent application of equivalence procedures which introduces a standardised process for the determination of equivalence;
- equivalence decisions to be reviewed at least once every three years by the relevant ESA and for such reviews to be made public;
- the Commission to consider the possibility of introducing an application process for granting equivalence which could be opened to third countries on a date specified in a given piece of legislation; and
- the Commission to conduct an in-depth review of all equivalence decisions taken, in order to determine the successes and failures of the current equivalence regime.

## **Prospectus Regulation: ESMA publishes final report on technical advice**

The European Securities and Markets Authority (ESMA) has published its [final report](#) on technical advice to the EU Commission under the Prospectus Regulation. The technical advice covers the following areas, previously the subject of three ESMA consultations:

- the format and content of the prospectus, base prospectus and final terms including the minimum information required for the universal registration document and the reduced information requirements for secondary issuances;
- the content, format and sequence of the EU Growth prospectus including its specific summary; and
- the scrutiny and approval of prospectuses and their constituent parts and the filing and review of the universal registration document.

## **Benchmarks: EMMI consults on Euribor methodology**

The European Money Markets Institute (EMMI) has launched a [consultation](#) on a hybrid methodology for the Euro Interbank Offered Rate (Euribor).

The proposed hybrid methodology for Euribor leverages on market transactions whenever available in line with regulatory requirements and consists of a three-level waterfall. The consultation provides further details on the determination of each level.

In addition to the proposed methodology, EMMI is also consulting on certain features of the current publication process and other aspects such as the inclusion and/or cessation of certain tenors.

EMMI intends to follow this consultation with a testing of the proposed methodology under live conditions from May to August 2018. EMMI also intends to launch a further consultation in Q3 2018 and to launch the hybrid methodology by Q4 2019, in accordance with the transitional period provided by the EU Benchmarks Regulation.

Comments are due by 15 May 2018.

## **IOSCO publishes recommendations on improving regulatory reporting and transparency in corporate bond markets**

The International Organization of Securities Commissions (IOSCO) has published its [recommendations](#) for improving the information on secondary corporate bond markets.

IOSCO's report emphasises the importance of ensuring the availability of corporate bond information, both to regulators in the form of reporting and to the public in the form of transparency requirements.

The report recommends that regulatory authorities should ensure they have access to sufficient information to perform regulatory functions. In addition, the report recommends that regulatory authorities should consider steps to enhance pre-trade transparency in corporate bond markets and implement regimes that require post-trade transparency.

## **Brexit: UK Government responds to report on future financial regulation**

The House of Lords EU Financial Affairs Sub-Committee has published the UK Government's [response](#) to the Committee's report on the future of financial regulation and supervision after Brexit.

Amongst other things, the UK Government:

- notes its continued engagement in international fora, commitment to the implementation of agreed international standards and development of economic and financial dialogues (EFDs) with emerging markets;
- expresses deep concern about the EU Commission's current proposals regarding CCPs, which it considers will cause market fragmentation and undermine efforts to strengthen financial stability;
- affirms its commitment to ensuring EEA firms can continue to operate in the UK;
- proposes to 'onshore' EU legislation in a way that will facilitate cooperation arrangements with overseas regulators and is consistent with the UK's existing regulatory framework under the Financial Services and Markets Act (FSMA). Following this approach, responsibility for Level 1 legislation and Level 2 Delegated Acts will rest with ministers and Parliament, and responsibility for binding technical standards (BTS) will transfer from EU regulators to UK regulators. The Government notes that Parliament may wish to consider its future approach to legislative scrutiny and oversight of regulation;
- notes that alignment and market access will require a tailored solution, which is more comprehensive and interactive than existing precedents such as the current equivalence regime; and
- hopes to establish comprehensive supervisory cooperation arrangements with the EU including extensive information exchange and potentially supervisory colleges, while also continuing to invest in international and bilateral relationships.

In relation to a transition period, John Glen MP, Economic Secretary to the Treasury, notes in a letter that the response does not reflect developments agreed at the March EU Council concerning the implementation period. As such, he intends to write to the Committee shortly to update and confirm the impact of those conclusions on the Government's response.

## **Brexit: House of Commons Exiting EU Committee reports on future UK-EU relationship**

The House of Commons Exiting the European Union Committee has published a [report](#) on the future UK-EU relationship.

The EU and UK are aiming to reach an agreement on a political declaration on the framework for their future relationship by October 2018 and the report sets out a number of tests by which to judge any such agreement, including:

- the border between Northern Ireland and the Republic of Ireland remaining open with no physical infrastructure or any related checks and controls;
- no additional costs to businesses that trade in goods or services;

- UK providers of financial and broadcasting services being able to continue to sell their products into EU markets as at present;
- UK providers of financial and other services being able to retain automatically, or with minimal additional administration, their rights of establishment in the EU, and vice versa, where possible on the basis of mutual recognition of regulatory standards;
- no impediments to the free flow of data between the UK and the EU;
- that any new immigration arrangements set up between the UK and the EU must not act as an impediment to the movement of workers providing services across borders or to the recognition of their qualifications and their right to practise;
- the UK seeking to maintain convergence with EU regulations in all relevant areas in order to maximise access to European markets; and
- the UK's continued participation in the European Medicines Agency, the European Aviation Safety Agency, and the European Chemicals Agency and in other agencies where there is a benefit to continuing co-operation.

### **FCA issues statement on cryptocurrency derivatives**

The Financial Conduct Authority (FCA) has issued a [statement](#) on the requirement for firms offering cryptocurrency derivatives to be authorised.

Cryptocurrencies are not currently regulated by the FCA provided they are not part of other regulated products or services. However, cryptocurrency derivatives are capable of being financial instruments under MIFID2. Consequently, the FCA statement reminds firms conducting regulated activities in cryptocurrency derivatives that they must comply with all applicable rules in the FCA's Handbook and any relevant provisions in directly applicable EU regulations.

The statement confirms that if a firm is dealing in, arranging transactions in, advising on or providing other services that amount to regulated activities in relation to derivatives that reference either cryptocurrencies or tokens issued through an initial coin offering (ICO), it is likely that they will require authorisation by the FCA. This includes:

- cryptocurrency futures – a derivative contract in which each party agrees to exchange cryptocurrency at a future date and at a price agreed by both parties;
- cryptocurrency contracts for differences (CFDs) – a cash-settled derivative contract in which the parties to the contract seek to secure a profit or avoid a loss by agreeing to exchange the difference in price between the value of the cryptocurrency CFD contract at its outset and at its termination; and
- cryptocurrency options – a contract which grants the beneficiary the right to acquire or dispose of cryptocurrencies.

### **Asset management market study: FCA publishes first policy statement and launches further consultation on remedies**

The FCA has published its first [policy statement](#) (PS18/8) on part of the package of remedies intended to address the concerns outlined in the June 2017 final report of the asset management market study. Alongside this the

FCA has published a [second consultation paper](#) relating to the rest of the package of remedies (CP18/9).

The first policy statement (PS18/8) sets out remedies intended to protect investors from the results of weak competition, including:

- final rules requiring fund managers to assess annually whether the charges taken from a fund are justified in the context of the overall value provided by the fund (an ‘assessment of value’);
- final rules requiring that independent directors make up at least 25% of an authorised fund manager’s board (with a minimum of two independent directors);
- a new prescribed responsibility for fund managers which will take effect alongside the wider extension of the Senior Managers and Certification Regime (SM&CR);
- rules to prevent fund managers retaining risk-free box profits; and
- [revised guidance](#) (FG18/3) to make it easier for fund managers to convert investors to cheaper share classes where this is in their interests.

CP18/9 invites comments on additional rules and guidance intended to improve the quality, comparability and robustness of information available to investors and includes proposals on:

- how fund objectives can be expressed more clearly and be more useful to investors;
- making it clearer when funds are benchmark-constrained, or limited in how far their holdings can differ from the weightings of a benchmark index; and
- ensuring that where a fund uses one or more benchmarks, this is disclosed consistently and explained to investors.

Comments on CP18/9 are due by 5 July 2018.

The FCA has also published an [occasional paper](#) setting out the results of behavioural research which looked at how different ways of presenting information about charges affected investors’ decision-making and their understanding and awareness of charges.

## **Central securities depositories: BaFin applies ESMA guidelines**

The German Federal Financial Supervisory Authority (BaFin) has [announced](#) that in its administrative practice it will apply the European Securities and Markets Authority’s (ESMA’s) guidelines in relation to central securities depositories (CSDs) on:

- the process for the calculation of the indicators to determine the most relevant currencies in which settlement takes place; and
- on the process for the calculation of the indicators to determine the substantial importance of a CSD for a host Member State.

The ESMA guidelines are intended to establish the process for the collection, processing and aggregation of the relevant data and information in order to ensure all concerned authorities are involved in the authorisation procedure and supervision of each CSD.

## **BaFin issues draft general decree granting approval for calculating liquidity outflow net of an interdependent inflow**

BaFin has published a [draft general decree](#) (Allgemeinverfügung) granting approval to credit institutions under Article 26 of Commission Delegated Regulation (EU) 2015/61 to calculate the liquidity outflow net – in relation to transmitted loans (Weiterleitungskredite) and syndicated loans – of an interdependent inflow which meets all the following conditions:

- the interdependent inflow is directly linked to the outflow and is not considered in the calculation of liquidity inflows in Chapter 3 of Commission Delegated Regulation (EU) 2015/61;
- the interdependent inflow is required pursuant to a legal, regulatory or contractual commitment; and
- the interdependent inflow arises compulsorily before the outflow.

Comments on the draft are due by 30 April 2018.

## **Business Constitution published in Journal of Laws**

A series of five acts of law collectively known as the Business Constitution has been published in the Journal of Laws, comprising:

- the [Act on Entrepreneurs](#);
- the [Act on the Ombudsman for SMEs](#);
- the [Act on the Central Records and Information on Economic Activity and Information Point for Entrepreneurs](#);
- the [Act on the Rules of Participation by Foreign Entrepreneurs and Other Foreign Persons in Commerce in the Republic of Poland](#); and
- the [Act on the Provisions Implementing the Act on Entrepreneurs and Other Acts Related to Economic Activity](#).

The Act on Entrepreneurs is the central element of a legal and institutional reform of the business environment that is being implemented by the Council of Ministers. The Act sets out the rules according to which economic activity may be commenced, conducted and ended in the Republic of Poland, including the rights and obligations of entrepreneurs and the tasks of the public authorities in this respect. The Act replaces the currently binding Act on Freedom of Economic Activity of 2 July 2004.

## **FSA consults on proposed revision to Corporate Governance Code and draft guidelines for investor and company engagement**

The Financial Services Agency (FSA) has published [draft guidelines](#) for investor and company engagement and the Tokyo Stock Exchange has published a [revised draft](#) of the Corporate Governance Code for public comments. The revision to the Code and the new engagement guidelines are intended to:

- encourage companies to make management decisions in response to changes in the business environment;



- ensure that companies have objective, timely and transparent procedures for CEO appointment/dismissal;
- emphasise the importance of strategic and systematic investments in fixed assets, R&D and human resources for companies to generate sustainable growth and increase corporate value over the mid- to long-term. Further, while making such investments, companies will need to conduct appropriate financial management that is consistent with their investment strategies and recognises cost of capital;
- ensure that the board of directors as a whole possess appropriate knowledge, experience and skills to support the management, and that the board maintains sufficient diversity, including gender and international experience, to appropriately discharge its responsibilities;
- encourage investors and companies to deepen their engagement on cross-shareholdings – companies will be required to assess whether or not to hold each individual cross-shareholding, and clearly disclose and explain the results of this assessment after specifically examining the purpose, benefits, and risks of each holding. In addition, companies will also be required to clearly disclose policies with respect to cross-shareholdings, including policies regarding the reduction of cross-shareholdings; and
- encourage companies to increase the investment management expertise of corporate pension funds and the number of Stewardship Code signatories, and promote effective stewardship activities.

Comments on both documents are due by 29 April 2018.

### **Fintech: FSA and FINMA exchange letters on cooperation**

The FSA and the Swiss Financial Market Supervisory Authority (FINMA) have [exchanged letters](#) on a cooperation framework on fintech.

The cooperation framework recognises the global nature of innovation in financial services and is intended to enhance the relationship between the two authorities on fintech. Under the framework, amongst other things, the two authorities intend to:

- refer 'financial innovators' to each other and provide support to them; and
- share information on fintech.

### **FSC proposes amendments to corporate governance legislation for financial companies**

The Financial Services Commission (FSC) has [proposed amendments](#) to the Act on Corporate Governance of Financial Companies (ACGFC), the Enforcement Decree of the ACGFC and the Regulation on Supervision of Corporate Governance of Financial Companies.

Amongst other things, the proposed amendments are intended to tighten executive disqualification rules, encourage board members with more diverse fields of professional expertise and background, set enhanced standards for the independence of auditor and audit committee members, and provide for greater transparency in executive compensation.

The key proposals include the following:

- the disqualification period for directors and officers who have been sentenced to imprisonment, probation, or punitive fines for criminal



wrongdoing will be adjusted to correspond to the severity of the penalty given;

- when selecting a new board member, the board's selection committee will be required to take into account the candidates' professional field of expertise and background in order to ensure a balanced and diversified board composition;
- outside directors will be required to make up at least two-thirds of the director selection committee;
- to enhance the independence of the financial firm's auditors and audit committee members, the minimum term for the audit committee members will be set at two years. The term for full-time auditors and executive audit committee members will not be allowed to exceed six years. To prevent conflicts of interest, no audit committee member may concurrently hold a position in another committee except for the remuneration committee; and
- performance and remuneration standards not tied to the financial firm's financial performance will be established for outside directors, the auditor, audit committee members, the chief compliance officer, and the chief risk officer. The individual aggregate remuneration amount is to be disclosed in the annual remuneration report for directors, officers, and executives in charge of financial investment whose performance-based pay exceeds the threshold amounts set by the Enforcement Decree of the ACGFC.

Comments on the proposed amendments are due by 29 April 2018.

## **MAS responds to feedback on proposed amendments to Securities Futures (Reporting of Derivatives Contracts) Regulations**

The Monetary Authority of Singapore (MAS) has published its [responses](#) to the feedback it received on its January 2016 public consultation on proposed amendments to the Securities and Futures (Reporting of Derivatives Contracts) Regulations (SF(RDC)R) to implement reporting of commodity and equity derivatives contracts, as well as other revisions to complete the implementation of the over-the-counter (OTC) derivatives trade reporting regime in Singapore.

Amongst other things, the MAS has clarified that:

- amendments to the Securities and Futures Act via the Securities and Futures (Amendment) Act 2017 make clear that spot contracts do not fall within the scope of 'derivatives contract'. Contracts for the purpose of fulfilling the needs of the day-to-day operations of a business are excluded from the definition of 'commodity derivatives contract'. Contracts entered into for the purposes of hedging financial risks do not, however, fall within the scope of the exclusion;
- on the reporting of equity derivatives contracts, debentures, shares, units in a business trust and collective investment schemes are not included in the definition of 'equity derivatives contracts'. Derivatives of a unit in a collective investment scheme will be subject to reporting obligations;
- on the types of information to be reported, the 'booking location' and 'trader location' data fields are intended to correspond to the definitions of 'booked in Singapore' and 'traded in Singapore' as set out respectively in regulation 2 of the SF(RDC)R;

- the implementation of collateral reporting will be deferred pending further international guidance in this area;
- the 'aggregate notional amount measure' will be used to determine whether non-bank financial institutions (FIs) should be subject to reporting obligations, on the grounds that this measure better reflects the level of trading activity of entities;
- the reporting of booking location and trader desk location data fields by all specified persons will commence on 1 October 2018;
- the reporting of commodity and equity derivatives contracts booked in Singapore and/or traded in Singapore by banks and merchant banks, will commence from 1 October 2018; and
- the reporting phases for non-bank FIs, starting with interest rate and credit derivatives contracts which are traded in Singapore, will commence from 1 October 2019, followed by the reporting of equity, commodity and foreign exchange derivatives contracts booked in Singapore and/or traded in Singapore, which will commence from 1 October 2020.

The amendments to the SF(RDC)R came into effect on 1 April 2018.

## **SGX consults on proposed safeguards for dual class share listings**

The Singapore Exchange (SGX) has launched a [public consultation](#) on the introduction of a primary listing framework for dual class share (DCS) structures to the Mainboard of Singapore Exchange Securities Trading Limited (SGX-ST) and proposed safeguards to address expropriation and entrenchment risks of DCS.

Amongst other things, SGX seeks feedback on the following proposals, in relation to the SGX-ST Listing Rules (Mainboard):

- to include new definitions of 'dual class share structure', 'enhanced voting process', 'multiple voting (MV) share' and 'ordinary voting (OV) share';
- to require the issuer to establish its suitability for listings with a DCS structure;
- to require holders of MV shares to observe a moratorium on the transfer or disposal of their entire shareholdings in the issuer in respect of their interests in both MV and OV shares for at least 12 months after listing;
- to cap voting rights attaching to MV shares at 10 votes per share and to prohibit the issuer from changing the voting differential ratio post-listing;
- for OV shareholders to collectively exercise voting control, whether OV shareholders must (a) hold at least 10% of the total voting rights of the issuer on a one-share-one-vote basis or (b) hold at least 10% of the total voting rights of the issuer;
- to prohibit an issuer from issuing MV shares post-listing except in the event of a rights issue, and whether such exception should be extended to bonus issue, scrip dividends and subdivision and consolidation of shares that do not raise new funds, and issuance of such MV shares must be approved by a special resolution of shareholders at a general meeting;
- to require the issuer to ensure, in undertaking any corporate action, that the proportion of the total voting rights of MV shares as a class against

those of OV shares after the corporate action will not increase beyond that proportion existing before the corporate action;

- to require that initial holders of MV shares must be directors of the issuer and to require MV shares to be converted to OV shares once the MV shareholder ceases to be a director or sells or transfers the MV shares, and to allow shareholders to waive such conversion through the enhanced voting process;
- to require that the majority of the Audit Committee, Nominating Committee and Remuneration Committee, including the respective chairmen, be independent;
- to require specific matters to be approved by shareholders under the enhanced voting process; and
- to require DCS companies to prominently identify themselves as such in their prospectuses, annual reports, circulars and announcements.

Comments on the consultation paper are due by 27 April 2018.

### **SGX RegCo launches SGX Fast Track programme for companies with good corporate governance standing**

Singapore Exchange Regulation Pte Ltd (SGX RegCo) has [launched](#) the SGX Fast Track programme to recognise listed companies that have a good corporate governance standing and compliance track record.

Companies in the programme will have prioritised clearance for selected corporate action submissions to SGX RegCo and their shareholders will benefit from faster time-to-market for key corporate actions. Examples of these submissions include circulars, requests for waivers and applications for share placement.

The selection of companies for the programme will be based on internal and external criteria focused on corporate governance standards, their compliance track record and quality of their submissions. An issuer's eligibility for the programme will be continuously monitored and SGX RegCo has the discretion to include and exclude an issuer from the scheme at any time.

### **Federal Reserve Bank of New York issues statement on initial publication of Treasury Repo Reference Rates**

The Federal Reserve Bank of New York (New York Fed), in cooperation with the US Office of Financial Research (OFR), has begun [publication of three reference rates](#) based on overnight repurchase agreement (repo) transactions collateralized by Treasury securities. The rates are:

- the Secured Overnight Financing Rate (SOFR);
- the Broad General Collateral Rate (BGCR); and
- the Tri-Party General Collateral Rate (TGCR).

The SOFR was identified by the Alternative Reference Rates Committee in June 2017 as its recommended alternative to US dollar LIBOR for use in certain new US dollar derivatives and other financial contracts.

As announced in the Federal Register, the New York Fed expects that the rates will be published each day at approximately 8:00 a.m. Eastern Time, in addition to statistics summarizing the distribution of volumes each day,

including the total dollar amount of transactions used to calculate each rate, rounded to the nearest billion, and the volume-weighted 1st, 25th, 75th, and 99th percentiles.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **EU Sustainable Finance Action Plan – What you need to know**

The European Commission recently unveiled its strategy for reforming the EU financial system to support its climate and sustainable development agenda.

Announced on 8 March, 'Action Plan: Financing Sustainable Growth' builds on many of the recommendations of the EU High-Level Expert Group on Sustainable Finance published earlier this year. Notable features of the Action Plan include the establishment of a new EU classification system for sustainable activities, mandating sustainability considerations into the fiduciary duties of institutional investors and asset managers, and measures to improve corporate disclosure of non-financial and climate related information.

This briefing paper discusses the Action Plan, which represents a significant step in the EU's effort to embed sustainability considerations into the financial system and contains a wide range of legislative and non-legislative measures. Certain of the recommendations are for imminent implementation in 2018 whilst more controversial proposals, such as potential amendments to capital requirements in the EU, are likely to be subject to fierce debate.

[https://www.cliffordchance.com/briefings/2018/03/eu\\_sustainable\\_financeactionplan-whatyo.html](https://www.cliffordchance.com/briefings/2018/03/eu_sustainable_financeactionplan-whatyo.html)

### **The PRA's regulatory approach to insurer's preparations for Brexit**

On 28 March 2018, the Bank of England (BoE) issued a press release on its regulatory approach to Brexit. In the press release, the BoE published a number of documents including a policy statement setting out the Prudential Regulation Authority's (PRA's) revised approach to the authorisation and supervision of international insurers (PS4/18), together with a related 'Dear CEO' letter on firms' preparations for Brexit.

This briefing paper examines the impact of the publications on insurers' Brexit planning.

[https://www.cliffordchance.com/microsites/brexit-hub/briefings/update\\_the\\_pras\\_regulatory\\_approach\\_to\\_insurers\\_preparations\\_for\\_brexit.html](https://www.cliffordchance.com/microsites/brexit-hub/briefings/update_the_pras_regulatory_approach_to_insurers_preparations_for_brexit.html)

### **Congress Authorizes the Seizure of Records Stored Overseas with the CLOUD Act – Beating the Supreme Court to the Punch**

The US government now has expanded powers to demand the disclosure of electronic data regardless of where that data is stored under a new federal statute that authorizes the US government to seize data stored overseas. The statute also eventually will allow foreign governments to compel disclosure from companies in the United States.

This briefing paper discusses the CLOUD Act.

[https://www.cliffordchance.com/briefings/2018/04/congress\\_authorizestheseizureofrecordsstore.html](https://www.cliffordchance.com/briefings/2018/04/congress_authorizestheseizureofrecordsstore.html)

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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